

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- - - - -x

In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 2, 2009

9:02 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

1
2 HEARING re Motion of the Debtors for Entry of Order Pursuant to
3 11 U.S.C. § 363(b) Authorizing and Approving Settlement
4 Agreements with Certain Unions
5

6 HEARING re Debtors' Motion Pursuant to Bankruptcy Code §§
7 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002,
8 4001 and 6004 to Amend DIP Credit Facility
9

10 HEARING re Continuation of GM 363 Sale Hearing
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25 Transcribed by: Lisa Bar-Leib

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1 THE COURT: I understand that I don't always speak
2 with perfect clarity. And no offense intended. But certainly
3 I want to deal with it, Ms. Wickouski.

4 MS. WICKOUSKI: Understood, Your Honor. Thank you.

5 THE COURT: Thank you. Okay. Do I have any other
6 substantive objections that are actually being argued that I
7 haven't heard yet? Mr. Schulman? Mr. Mayer?

8 MR. MAYER: Yes, Your Honor. If I may. Well, this -
9 -

10 THE COURT: Oh, another asbestos objection.

11 MR. REINSEL: Your Honor, Ron Reinsel on behalf of
12 Mark Buttita. I will try not to rehash anything Mr. Esserman
13 said or anything the very eloquent Mr. Jakubowski said. I want
14 to make just a couple of points and a clarification.

15 We have objected on a number of grounds, including
16 sub rosa plan, and the extent to which the requested sale
17 extends past the bounds of 363, specifically to claims, and most
18 importantly to future claims; that they are not interests in
19 property, and a certainly that future claim that has not come
20 into existence, has not arisen, goes so far beyond the pale of
21 an "interest in property" even if that is permitted. But I
22 want to concentrate on just a couple of points that distinguish
23 this case both from Chrysler and TWA, and also the White Motor
24 case that the debtors have relied on.

25 Contrary to Chrysler, Judge, and contrary to TWA,

1 this isn't a sale of assets that will meld assets into an
2 existing business. It is, instead, a standalone, complete
3 continuation of the exact same business enterprise. It is the
4 same products; it is the same employees; it's the same
5 management; it's the same marketing; it's the same logos. And
6 to accomplish what the debtor and Treasury has indicated they
7 want is "a seamless transition in the eyes of consumers." In
8 other words, New GM is just the same Old GM.

9 Yet, they want to escape the strictures of potential
10 continuation of liability as a successor of existing GM. They
11 look -- in the order that they're going to present to you,
12 while we haven't seen any final order yet, but we've seen what
13 they're looking for. And that is complete, but not just an
14 approval of a sale, but protection from specific factual
15 findings that may lead subsequent state courts to find that
16 there is continuation of liability under relevant state law;
17 despite the fact that many of those findings fly specifically
18 in the face of the evidence that we heard here, that could well
19 lead a state court to find such continuing liability.

20 Secondly, Judge, as you noted yesterday also in that
21 order, they're looking for an injunction. And you asked if
22 that injunction didn't kind of sound like a duck -- like the
23 injunction under 524(g). Well, Your Honor, it not only sounds
24 like a duck, it quacks like a duck, it walks like a duck, it
25 flies like a duck, and leaves feathers behind it like a duck.

1 It is completely the injunction as to future asbestos liability
2 that was provided for in Section 524(g).

3 Now, aside from the discriminatory treatment that's
4 provided here, they're trying to get protections under the code
5 without complying with the code's requirements. Now, Mr.
6 Miller pointed out that this is not an asbestos case. This is
7 not an asbestos-driven case, and that they're not seeking
8 relief under -- they're not including Section 524 treatment
9 here. All of that is absolutely true. The point is, however,
10 they're trying to get equivalent relief without complying with
11 the statutory requirements. And that goes both to the ability
12 to even give the relief, as well as the effective notice and
13 due process requirements that are required in order to get that
14 relief.

15 Let's distinguish some of those cases -- the other
16 cases. White Motors, it acknowledges, found that 363 did not
17 provide a basis to sell assets free and clear of claims. And
18 it went on to find that in order to do that, however -- this is
19 certainly beyond the express statutory language -- the statute
20 says "free and clear of interest in that property."

21 Now, whether or not claims become interest in
22 property, cited in other cases. But it found that 363 didn't
23 provide that basis. We had to look to Section 105 of the code,
24 the Court's general equitable powers to make things happen --

25 THE COURT: Yes, I know. We went through that with

1 Mr. Jakubowski.

2 MR. REINSEL: All right. But here's where I wanted
3 to get with that, Judge. White Motors was decided in 1987. In
4 1994 Congress enacted Section 524(g). Section 524(g) provides
5 a comprehensive design by Congress for dealing with asbestos
6 claims specifically, both present, and more importantly, future
7 claims; looking at the unique situation that that kind of
8 injury entails, particularly that it's an insidious product, it
9 went into commerce, and it has a very long latency period, such
10 that from exposure to actually manifesting a disease, finding
11 out that you have a claim, is a matter of decades. Ten,
12 twenty, thirty, forty years. Such that those folks who will
13 develop disease, who will become claimants, are not presently
14 claimants. In fact, the nature of their potential future
15 illness is specifically excluded from the definition of a claim
16 under the Bankruptcy Code. And in fact, under 524(g) it's
17 referred to a demand.

18 The problem of recognizing of how to give adequate
19 due process to those future potential claimants, those demand
20 holders, and how to give adequate notice, because you can't
21 give them notice -- in fact, we asked Mr. Henderson -- one of
22 the few questions I asked here, was, you gave broad notice of
23 these proceedings in order to give everyone notice of their
24 rights were at issue and could be affected. But he recognized
25 that GM has 650 million dollars-worth of projected asbestos

1 liability going out over a period of at least ten years, and
2 that many of those claimants, many of those potential
3 claimants, don't presently have a disease, don't know they have
4 a claim, and that whatever publication notice was given to
5 them, wouldn't have reached them and would have done them no
6 good whatsoever.

7 In Chrysler, they kind of gave that notice issue
8 fairly short shrift. There's one -- they deal with it in about
9 two sentences on page 111 of that decision, simply holding that
10 "With respect to potential future tort claimants, their
11 objections are overruled, as those issues have been discussed.
12 Notice of the proposed sale was published in newspapers in very
13 wide circulation, and the Supreme Court has held that
14 publication of notice in such newspapers provide sufficient
15 notice to claimants 'whose interests or whereabouts could not
16 be with due diligence, ascertained'", citing to the Supreme
17 Court's decision in Mullane v. Central Hanover Bank.

18 Mullane was a trust fund case. You either held funds
19 in a trust or you didn't. This --- we're not presented here
20 with a question of we can't ascertain the location of folks; we
21 can't, with reasonable due diligence send them a specific
22 notice, such that the publication even becomes sufficient.
23 We're dealing with individual whose claim doesn't yet exist,
24 who don't know that they have rights that may be affected, and
25 won't know that for years. That's why Congress, in Section

1 524(g), provided mechanisms to provide due process to those
2 folks, by the creation of a specific representative in the
3 court.

4 Last week you were asked to appoint someone -- a
5 futures representative to look out after the interests of those
6 future folks. You declined. You said we may look at that
7 later. But the point is, there is no one here looking out for
8 their interests today. They didn't get notice of this
9 proceeding. You can't give effective notice of this
10 proceeding. And no one is representing them here. I want to
11 be clear, I am representing a single current asbestos claimant.
12 Mr. Esserman was representing single current asbestos
13 claimants. We're not advocating -- other than saying they're
14 not here, Judge, we're not here in a position where we can
15 reasonably represent their interests in this case.

16 But let me be clear about the impact of 524(g) here.
17 As we said, this is not an asbestos-driven case. There is no
18 requirement that the debtor use 524(g) here. However, the
19 point is, if they don't -- if they don't employ the processes
20 that Congress designed in that section of the code to provide
21 adequate notice, adequate due process to claimants, then you
22 don't get the protections that that section provides. You
23 don't get the injunction that they're looking for, at least as
24 to asbestos claimants. You don't get the removal of future
25 successor liability as to those asbestos claimants. It's a

1 question -- it's up to the debtor, and in this case, and the
2 buyer, to decide if they want to include those sorts of
3 relevant protections. If they don't -- protections for the
4 claimants and future claimants. However, if they don't the
5 point is, they take their chances, and you, Judge, can't give
6 them the same protections as that specific statute would under
7 the Court's general 105 equitable powers. That's all, Your
8 Honor. Thank you very much.

9 THE COURT: Thank you. Mr. Mayer?

10 MR. MAYER: Thank you, Your Honor.

11 (Pause)

12 MR. MAYER: Excuse me, Your Honor. I need thirty
13 seconds to decide -- to figure how much of what we talked about
14 last night can be put on the public record at this moment. Is
15 it possible to take a five --

16 THE COURT: How much time to you need?

17 MR. MAYER: -- take a short recess, perhaps?

18 THE COURT: Actually, since we've been going so long,
19 let's take a ten-minute recess.

20 MR. MAYER: Okay. Thank you, Your Honor.

21 THE COURT: See you back in ten minutes, folks.

22 (Recess from 10:47 a.m. until 11:10 a.m.)

23 MR. MAYER: Thank you, Your Honor. And good morning.
24 Again, Thomas Moers Mayer for Kramer Levin Naftalis & Frankel,
25 counsel to the official committee of unsecured creditors.

1 that's an issue to be determined, Your Honor, after the sale is
2 consummated.

3 THE COURT: Mr. Miller, there's no channeling order,
4 but there is an injunction requested. And the two lawyers who
5 were raising asbestos issues pointed out that if you did give
6 personal notice and applied it to every state in the United
7 States you wouldn't be able to do much with it because they
8 wouldn't know that they've contracted asbestos.

9 Now, I have an interesting twist here. Both of those
10 folks represent existing asbestos claimants who analytically in
11 the Jakubowski situation. But I also believe that this issue
12 was raised that hasn't been discussed in the Second Circuit
13 argument in the (indiscernible) appeal. To what extent would
14 it be proper or improper in Your view if words were added to
15 any approval order that said to the fullest extent
16 constitutional principal?

17 MR. MILLER: Just speaking for myself, Your Honor,
18 without consultation for client, I don't have problem with that
19 language. But I would, again, note, Your Honor, that Judge
20 Gonzalez dealt with the issue of notice and I do not recall the
21 colloquy between Judge Sack and Mr. Esserman, and I'm not sure
22 that colloquy related to injunctions or the ability to sue.
23 All I'm saying, Your Honor, there is going to be an estate.
24 And estate which we believe will have significant value.

25 Part of the claimants who will have rights against